

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

TASER INTERNATIONAL, INC., *et al.*,

Plaintiffs,

v.

MORGAN STANLEY & CO., INC., *et al.*,

Defendants.

CIVIL ACTION NO.

1:10-cv-03108-JOF

**DECLARATION OF
BRAD M. ELIAS**

I, BRAD M. ELIAS, declare as follows:

1. I am an associate at the law firm of O'Melveny & Myers LLP ("OMM"), counsel for Merrill Lynch Professional Clearing Corp. ("Merrill Pro") in this matter. I am over 18 years of age and have personal knowledge of the matters set forth in this declaration. I submit this declaration in support of Merrill Lynch Professional Clearing Corp.'s Opposition to Plaintiffs' Motion for Remand.

2. Attached to this declaration as Exhibit A is a true and correct copy of relevant excerpts of Securities and Exchange Commission ("SEC") Release No. 34-48709, 68 Fed. Reg. 62,972 (Nov. 6, 2003).

3. Attached to this declaration as Exhibit B is a true and correct copy of relevant excerpts of Senate Report No. 94-75 (1975), *reprinted in 1975 U.S.C.C.A.N. 179* (Apr. 14, 1975).

4. Attached to this declaration as Exhibit C is a true and correct copy of relevant excerpts of SEC Release No. 34-47978, 68 Fed. Reg. 35,037 (June 4, 2003).

5. Attached to this declaration as Exhibit D is a true and correct copy of relevant excerpts of SEC Release No. 34-13163, 42 Fed. Reg. 3,916 (Jan. 13, 1977).

6. Attached to this declaration as Exhibit E is a true and correct copy of relevant excerpts of an article titled “Division of Market Regulation: Responses to Frequently Asked Questions Concerning Regulation SHO,” published by the SEC on its website, available at <http://www.sec.gov/divisions/marketreg/mrfaqregsho1204.htm> (accessed Oct. 22, 2010).

7. Attached to this declaration as Exhibit F is a true and correct copy of relevant excerpts of SEC Release No. 34-50758, 69 Fed. Reg. 70,852 (Dec. 7, 2004).

8. Attached to this declaration as Exhibit G is a true and correct copy of relevant excerpts of SEC Release No. 34-50103, 69 Fed. Reg. 48,008 (Aug. 6, 2004).

9. Attached to this declaration as Exhibit H is a true and correct copy of SEC Release No. 34-17422, 46 Fed. Reg. 3,104 (Jan. 7, 1981).

10. Attached to this declaration as Exhibit I is a true and correct copy of webpage publishing the transcript of a speech given by Harvey Pitt on November 16, 2007, available at <http://www.financialsensearchive.com/fsn/2007/HarveyPitt.pdf> (accessed October 22, 2010).

11. Attached to this declaration as Exhibit J is a true and correct copy of an article titled “Overstock Lobbies to Fight Short Selling,” published by New York Post on November 23, 2007, available at http://www.nypost.com/p/news/business/item_sEKKBsBRTLNCsvdkAppmxL (accessed Oct. 22, 2010).

12. Attached to this declaration as Exhibit K is a true and correct copy of the National Association of Securities Dealers (“NASD”) Rule 3370 as it appears in the NASD April 2004 Archive Rulebook, accessed on IntelliConnect.

13. Attached to this declaration as Exhibit L is a true and correct copy of New York Stock Exchange (“NYSE”) Rule 440C.10 as it appears in the NYSE April 2004 Archive Rulebook, accessed on IntelliConnect.

14. Attached to this declaration as Exhibit M is a true and correct copy of a press release titled “DTCC Corrects Misrepresentations on Naked Short Selling Litigation,” published by the Depository Trust and Clearing Corporation (“DTCC”) on its website, available at <http://www.dtcc.com/news/press/releases/2006/litigation.php> (accessed Oct. 22, 2010).

15. Attached to this declaration as Exhibit N is a true and correct copy of the complaint filed by plaintiffs in the action *Pet Quarters, Inc. v. Depository Trust & Clearing Corp.*, No. 4:04-cv-01528-WRW, filed on October 29, 2004 in the Circuit Court of Pulaski County, Arkansas and removed on Dec. 1, 2004 to the U.S. District Court for the Eastern District of Arkansas.

16. Attached to this declaration as Exhibit O is a true and correct copy of the complaint filed by plaintiffs in the action *Capece v. Depository Trust & Clearing Corp.*, No. 9:05-cv-80498-KLR, filed on April 28, 2004 in the U.S. District Court for the Southern District of Florida.

17. Attached to this declaration as Exhibit P is a true and correct copy of the California Superior Court’s order sustaining defendants’ Demurrer to Plaintiff’s Second Amended Complaint in the action *Signalife, Inc. v. Vianale, et al.*, No. BC397444, filed on March 1, 2010.

18. Attached to this declaration as Exhibit Q is a true and correct copy of the notice of the California Superior Court's ruling sustaining defendants' Demurrer to Plaintiff's Third Amended Complaint in the action *Signalife, Inc. v. Vianale, et al.*, No. BC397444, filed on May 28, 2010, and a true and correct copy of a relevant excerpt of the transcript of the May 27, 2010 hearing where Judge Mohr ruled to sustain the demurrer.

19. Attached to this declaration as Exhibit R is a true and correct copy of a letter from Michael Mather to Judge Munter of the Superior Court of California, County of San Francisco, dated May 13, 2010 and forwarded to all parties by the Court on May 18, 2010, regarding the action *Avenius v. Banc of Am. Secs. LLC*, No. CGC-06-453422.

20. Attached to this declaration as Exhibit S is a true and correct copy of excerpts of the Order Adopting Proposed Findings and Recommendations signed by Judge Rodney S. Webb and dated July 10, 2007 in *Pet Quarters, Inc. v. Depository Trust & Clearing Corp.*, No. 4:04-cv-01528-WRW in the U.S. District Court for the Eastern District of Arkansas.

21. Attached to this declaration as Exhibit T are relevant excerpts of an amicus brief filed by the SEC in the action *Nanopierce Techs., Inc. v.*

Depository Trust & Clearing Corp., No. CV04-01079 in the Supreme Court of the State of Nevada.

22. Attached to this declaration as Exhibit U is a true and correct copy of relevant excerpts of an *amicus* brief filed by the SEC in the action *Whistler Invs., Inc. v. Depository Trust & Clearing Corp.*, No. 06-16088 in the U.S. Court of Appeals for the Ninth Circuit.

23. Attached to this declaration as Exhibit V is a true and correct copy of relevant excerpts of an *amicus* brief filed by the SEC in the action *Pet Quarters, Inc. v. Depository Trust & Clearing Corp.*, No. 08-2114 in the U.S. Court of Appeals for the Eighth Circuit.

24. Attached to this declaration as Exhibit W is a true and correct copy of relevant excerpts of Plaintiffs' Reply to Defendants' Opposition to Motion to Remand filed in *Avenius v. Banc of Am. Secs. LLC*, No. 3:06-cv-04458-MJJ in the U.S. District Court for the Northern District of California.

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct. Executed this 25th day of October 2010 in New York, New York.

/s/ Brad M. Elias
Brad M. Elias